



March 9, 2018

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Via ECF

REPLY TO MINNEAPOLIS

The Honorable Susan Richard Nelson
U.S. District Judge, United States District Court
774 Federal Building
316 N. Robert Street
St. Paul, MN 55101

Re: *In Re: National Hockey League Players' Concussion Injury Litigation*
Court File No. 14-2551 (SRN/BRT)

Dear Judge Nelson:

This letter explains the correction made to Plaintiffs' Reply in Support of Motion for Class Certification and for Appointment of Class Representatives and Class Counsel (ECF No. 936 and ECF No. 937), the corrected versions of which were filed this afternoon.

On page 16, the corrected briefs *replace* Plaintiffs' citation to *Allstate Ins. Co. v. Hague*, and brief discussion of Minnesota's contacts with class members' claims, *with* citation to *Sun Oil Co. v. Wortman* and brief discussion showing that such contacts are unnecessary for the forum's remedial law to apply.

The correction is reflected below (additions in **bold**):

3. **Both Applying Minnesota and New York Law Is Constitutional** ~~Easily Pass the Due Process Clause's Contacts Threshold~~

The NHL challenges the constitutionality of applying Minnesota law under *Phillips Petroleum Co. v. Shutts*, 472 U.S. 797 (1985), because most Class members are not "Minnesota residents" and that Minnesota did not field a team for seven years. The NHL ignores binding Supreme Court precedent.

In *Sun Oil Co. v. Wortman*, the Supreme Court held that *Shutts*'s significant contacts test applies only to issues of substantive law and does not disallow courts from applying forum law to "control the remedies available," regardless of forum contacts with class members' claims. 486 U.S. 717, 730 (1988); see also *Shutts*, 472 U.S. 797, 832 n.11 (Stevens, J. Concurring) (although Kansas did not have sufficient contacts to apply its substantive law, defendant "could not contend that the Constitution bars a Kansas court from applying the Kansas postjudgment interest statute" extraterritorially). Because Minnesota characterizes monitoring as a remedy, its interest as the forum is "irrefutable," regardless of any additional contacts. 472 U.S. at 832 n.11. To the extent their argument implies otherwise elsewhere, Plaintiffs now clarify it.

~~In *Hague*, the Supreme Court held that Minnesota law *could* constitutionally apply even though the plaintiff and her decedent were Wisconsin residents and the death occurred in Wisconsin. *Allstate Ins. Co. v. Hague*, 449 U.S. 302, 311-12 (1981). The defendant did business in Minnesota (despite not being located there), the decedent had done work in Minnesota, and the plaintiff moved to Minnesota after the~~

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~~cause of action arose. *Id.* Here, the NHL has always had strong presence in Minnesota; it continued to conduct significant business operations and drafting activities in Minnesota throughout the class period; and former players performed in Minnesota, distinguishing *Cruz v. Lawson Software, Inc.*, 2010 WL 890038 (D. Minn. Jan. 5, 2010) (Opp. at 43). See Mot. at 43-44.~~

The corrected memoranda (ECF No. 964 and ECF No. 965) are identical to the memoranda filed Wednesday, except as noted above and except as to correlating corrections in the Table of Contents and Table of Authorities.

Very truly yours,

ZIMMERMAN REED LLP

A handwritten signature in black ink, appearing to read 'CSZ', with a long horizontal line extending to the right.

Charles S. Zimmerman

CSZ:lah

cc: All Counsel of Record
(via ECF)